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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/242,215      | 02/08/1999  | BILL H. MCANALLEY    | 013238.0172         | 9780             |

20594 7590 02/07/2002

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EXAMINER

FLOOD, MICHELE C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1651

DATE MAILED: 02/07/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/242,215

Applicant(s)

McAnalley et al..

Examiner

Michele Flood

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 11, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 6-17, and 22-47 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1, 6-17, and 22-47 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

Art Unit: 1651

## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. <sup>16-17, 22</sup> Claims ~~1-22~~, 27-37 and 40-43, drawn to a dietary supplement composition comprising nutritionally effective amounts of at least six saccharides, wherein said saccharides are selected from a first group of saccharides consisting of: galactose, glucose, mannose, xylose and acetylated mannose; and a second group of saccharides consisting of: N-acetylneuraminic acid, fucose, N-acetylgalactosamine, N-acetylglucosamine, arabinose, glucuronic acid, galacturonic acid, iduronic acid and arabinogalactan, wherein said composition comprises at least one saccharide selected from said first group of saccharides and at least one saccharide selected from said second group of saccharides, classified in class 536, subclass 123, for example.
  - II. Claims 23-26, drawn to a dietary supplement composition for providing nutritional product saccharides, comprising nutritionally effective amounts of acetylated mannose, gum ghatti, gum tragacanth, glucosamine, corn starch and arabinogalactan, classified in class 514, subclass 811 or in class 514, subclass 922, for example.

Art Unit: 1651

- III. Claims 44-45, drawn to a dietary supplement composition for providing nutritionally effective amounts of tragacanth gum, gum ghatti, arabinogalactan and *Aloe vera* extract, classified in class 424, subclass 744, for example.
- IV. Claims 46-47, drawn to a dietary supplement composition for providing nutritionally effective amounts of *Aloe vera* extract, gum ghatti, tragacanth gum, glucosamine, corn starch and arabinogalactan, classified in class 536, subclass 114 or in class 536, subclass 128, for example.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I-IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the four different inventions are directed to five different compositions comprising different ingredients in different amounts. Different compositions comprising different ingredients would be expected to have different functional effects as evidenced by the claims themselves.

3. Because these inventions are distinct for the reasons given above and the search required for one Group is not required for another Group, restriction for examination purposes as indicated is proper.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

Art Unit: 1651

amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is (703) 308-9432. The examiner can normally be reached on Monday through Friday from 7:15 am to 3:45 pm.

MCF

February 6, 2002



CHRISTOPHER R. TATE  
PRIMARY EXAMINER